

REMARKS

Claims 2, 6, 9, 11, 15 and 17 are pending. A restriction was required. Applicants traverse the restriction requirements and submit that it would not be burdensome on the Patent Office to search for all of the claim rather than the restricted claims. Claims 1, 3-5, 7-8, 10, 12-14, 16 are withdrawn without prejudice.

Claims 2, 6, 9, 11, 15 and 17 are rejected under § 103 for being obvious over Meoli in view of Byron. Applicants traverse these rejections.

Applicants submit that the combination of these references do not teach or suggest each and every element of the claimed invention. In particular, there is no suggestion or teaching of a product produced by the claimed process. As such, Applicants respectfully submit that a case of obviousness has not been made and that withdrawal of the rejections is appropriate.

Applicants submit that Meoli is not properly characterized by the Office Action. The Office Action cites Meoli for its alleged teaching of mometasone, suspensions, metered dose inhalers and active ingredient instability. Applicants submit that to summarize Meoli for these teachings is incorrect and misleading. It is impermissible within the framework of 35 USC § 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of the other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art.

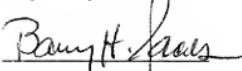
Bausch & Lomb, Inc. v. barnes-Hind/Hydrocurve, Inc. 796 F2d 443, 230 USPQ 416 (Fed Cir 1986). The Meoli reference is directed to dry powder inhalers. Meoli mentions MDIs, mometasone and stability issues with medicaments but in different contexts. Specifically, Meoli teaches alternative delivery methods to medicaments in solutions or suspensions in MDIs. Namely, Meoli teaches medicaments in a dry powder form. Meoli's teachings and suggestions are actually incompatible with suspensions or solutions in MDIs. Applicants respectfully submit that the Office Action impermissibly and selectively chose parts of Meoli that did not arrive at a fair assessment of the teachings of Meoli. As such, Applicants submit that withdrawal of the rejections based on Meoli is appropriate.

Applicants submit Meoli teaches away from the presently claimed invention. Inventing a method of producing an effective product, in the face of art which strongly suggests that such a method would produce unacceptable results, is the very antithesis of obviousness. *In re Rosenburg and Brant*, 386 F2d 1015, 156 USPQ 24, 26 (CCPA 1967).

Meoli states there are stability problems and as a way to overcome stability problems, Meoli uses formoterol in a dry powder form. Meoli teaches away from using medicaments in a solution or suspension. Applicants' claimed invention uses a suspension or solution with a medicament. Accordingly, Applicants respectfully submit that withdrawal of the rejections is appropriate.

Based on the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance and request favorable consideration.

Respectfully submitted,



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